

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE COMMISSIONER OF COMMERCE

In the Matter of the Certificate of Exemption  
of Steven Todd, d/b/a Steven Todd  
Remodeling and Roofing

**FINDINGS OF FACT  
CONCLUSIONS, AND  
RECOMMENDATION**

The above-entitled matter came on for a prehearing conference by telephone conference call before Administrative Law Judge Barbara L. Neilson on Friday, February 11, 2000, at 3:30 p.m. Stephen K. Warch, Assistant Attorney General, Manager, Commerce and Charities Division, Suite 1200, NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, appeared on behalf of the Department of Commerce ("the Department"). There was no appearance by or on behalf of the Respondent, Steven Todd d/b/a/ Steven Todd Remodeling and Roofing, 2042 Flint Lane, Eagan, Minnesota 55122. The record closed on February 11, 2000.

**NOTICE**

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Steven Minn, Commissioner, 133 East Seventh Street, St. Paul, Minnesota 55101, at (651) 296-2594, to ascertain the procedure for filing exceptions or presenting argument.

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**STATEMENT OF ISSUE**

The issue in this case is whether the Respondent has an unsatisfied, outstanding judgment entered against him arising out of negligent and incompetent roofing work and thus has been shown to be incompetent, untrustworthy, or financially irresponsible in violation of Minn. Stat. § 326.91, subd. 1(6); whether the Respondent completed a roofing job in violation of the Minnesota State Building Code, and thus has performed

negligently or in breach of contract in violation of Minn. Stat. § 326.91, subd. 1(4); whether the Respondent performed roofing work without holding a license or a certificate of exemption from the Department, and thereby engaged in unlicensed roofing activity in violation of Minn. Stat. § 326.84, subds. 1 and 2; and whether the Respondent failed to respond to a request for information from the Department, in violation of Minn. Stat. § 45.027, subd. 1a; and, if so, whether the Respondent's Certificate of Exemption should be subjected to discipline pursuant to Minn. Stat. §§ 45.027, subd. 7, and 326.91, subd. 1.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. The Respondent, Steven Todd d/b/a Steven Todd Remodeling and Roofing, applied for and received Certificate of Exemption No. 20081974 from the Minnesota Department of Commerce on November 15, 1996. The Respondent renewed the Certificate of Exemption on November 5, 1997, and the Certificate of Exemption expired on March 31, 1998.

2. The Notice of and Order for Hearing and Notice of Prehearing Conference in this matter was served upon the Respondent by first class U.S. mail on November 8, 1999, at 2042 Flint Lane, Eagan, MN 55122.

3. The Notice of and Order for Hearing and Notice of Prehearing Conference served on the Respondent contained the following informational notice:

**If Respondent fails to attend or otherwise appear at any prehearing conference, settlement conference, or hearing in this matter, or fails to comply with any interlocutory order of the judge after having been served with a copy of this Order, Respondent shall be deemed in default and the allegations or issues set forth herein may be deemed proved, and Respondent's residential building contractor license may be revoked or suspended, Respondent may be censured and/or a civil penalty may be imposed against Respondents without further proceedings.**

(Emphasis in original.)

4. The Notice of and Order for Hearing and Prehearing Conference scheduled a prehearing conference for December 15, 1999. The Respondent contacted counsel for the Department during the morning of December 15, 1999, and told him that he was taking his father to the hospital and could not attend the Prehearing Conference that day. Counsel for the Department informed the Respondent that he would not object to a continuance of the Prehearing Conference.

5. The Administrative Law Judge issued an Order on January 4, 2000, in which the Respondent's request for a continuance of the December 15, 1999,

Prehearing Conference was granted. The Prehearing Conference was rescheduled for January 19, 2000, at 1:30 p.m.

6. During the morning of January 19, 2000, the Administrative Law Judge called the Respondent and counsel for the Department to ascertain whether they wished to hold the Prehearing Conference via telephone conference call in light of the weather and travel conditions that day. The Respondent did not return the message left by the Administrative Law Judge on his pager on January 19, 2000, and he did not appear in person at the Prehearing Conference at 1:30 p.m.

7. The Respondent left a voice mail message for the Administrative Law Judge on January 20, 2000, and indicated that he had been unable to attend the Prehearing Conference because he was in Rochester with his father at the hospital. Counsel for the Department did not object to a continuance of the Prehearing Conference under these circumstances.

8. The Administrative Law Judge issued a Second Prehearing Order on February 1, 2000, continuing the Prehearing Conference to Friday, February 11, 2000, at 1:30 p.m.

9. The Administrative Law Judge issued a Third Prehearing Order on February 4, 2000, continuing the Prehearing Conference to Friday, February 11, 2000, at 3:30 p.m. The cover letter accompanying the Third Prehearing Order contained the following notice:

Pursuant to Minn. Rules 1400.7500, requests for a continuance of the prehearing conference will be granted only upon a showing of good cause. Unless time does not permit, a request for continuance of a hearing shall be made in writing to the Judge and shall be served upon counsel for the Department. In determining whether good cause exists, due regard shall be given to the ability of the party requesting a continuance to effectively proceed without a continuance. A request for a continuance filed within five (5) business days of the hearing shall be denied unless the reason for the request could not have been earlier ascertained. Accordingly, the Respondent shall ensure that he notifies the Administrative Law Judge and counsel for the Department as far in advance of the prehearing conference as is feasible if he wishes to request a continuance.

**If Respondent fails to attend or otherwise appear at the prehearing conference without good cause and without making an appropriate request for a continuance in advance of the prehearing conference, he shall be deemed in default and the allegations or issues set forth herein may be deemed proved, and Respondent's residential building contractor license may be revoked or suspended, Respondent may be censured, and/or a civil penalty may be imposed against him without further proceedings.**

(Emphasis in original.) In addition, the cover letter accompanying the Third Prehearing Order contained the following admonition:

**Mr. Todd is reminded that, if he fails to be available for this prehearing conference without good cause and without making an appropriate request for a continuance in advance of the prehearing conference, he shall be deemed to be in default and the allegations or issues set forth in the Notice of and Order for Hearing may be deemed proved, his residential building contractor license may be revoked or suspended, he may be censured, and/or a civil penalty may be imposed against him without further proceedings.**

(Emphasis in original.)

10. The Respondent did not file any Notice of Appearance with the Administrative Law Judge during this proceeding. He did not make any request for a continuance or any other relief prior to the February 11, 2000, Prehearing Conference. The Administrative Law Judge called the Respondent on his pager telephone number (the only telephone number provided to the Judge by the Respondent) at 3:30 p.m. on February 11, 2000, in order to secure his participation in the Prehearing Conference. The Respondent did not answer the pager or call the Administrative Law Judge back. The Respondent thus did not appear at the Prehearing Conference telephone conference call scheduled for February 11, 2000, or have an appearance made on his behalf. He also did not contact the Administrative Law Judge between February 11, 2000, and the date on which this Report was issued.

11. Because the Respondent failed to appear at the hearing in this matter, he is in default. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice of and Order for Hearing and Notice of Prehearing Conference are hereby taken as true and incorporated into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Minnesota Department of Commerce and the Administrative Law Judge have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 45.027, and 326.91.

2. The Department has given proper notice of the hearing in this matter and has fulfilled all relevant substantive and procedural requirements of law and rule.

3. The Respondent, having made no appearance at the Prehearing Conference, and not requesting any continuance or relief, is in default. Pursuant to Minn. Stat. § 1400.6000, the allegations contained in the Notice of and Order for Hearing and Notice of Pre-Hearing Conference are hereby taken as true.

4. The Respondent has violated Minn. Stat. §§ 326.84, subds. 1 and 2, 326.91, subds. 1 (4) and (6), and 45.027, subd. 1a. The Respondent is subject to discipline and/or civil penalties pursuant to §§ 45.027, subds 6 and 7, and 326.91, subd. 1.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Commissioner of Commerce take disciplinary action against the Respondent.

Dated: February 15, 2000

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BARBARA L. NEILSON  
Administrative Law Judge

Reported: Default.

### **NOTICE OF AGENCY DECISION**

Under to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.